

# SINHA LAW

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March 12, 2018

Via US Mail, Certified

MAR 15 2018

Luis Portillo  
Plant Manager  
Christy Vault Company, Inc.  
9700 Avenue 256  
Tulare, CA 93274

Robert B. Christensen  
President, Agent for Service  
Christy Vault Company, Inc.  
1000 Collins Avenue  
Colma, CA 94014

**Re: 60-Day Notice of Violations and Intent to File Suit ("Notice") Under the Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Christy Vault Company, Incorporated – Tulare Facility:

I am writing on behalf of the California Environmental Protection Association ("CEPA") to give legal notice that CEPA intends to file a civil action against Christy Vault Company, Inc. ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Christy Vault Company facility located at 9700 Avenue 256 in Tulare, California ("the Facility" or "the site").

CEPA is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CEPA intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

## **I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

CEPA's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Stormwater Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to CEPA, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTs") indicates that on or around June 17, 1993, the Discharger submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the 1992 Permit. On or around August 11, 2015, the Discharger submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 5F54I007252.

As more fully described in Section III, below, CEPA alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

## **II. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Christy Vault Company's permanent facility address of 9700 Avenue 256 in Tulare, California.

The Christy Vault Company – Tulare Facility is a Portland Cement concrete precasting plant. Facility operations are covered under Standard Industrial Classification Code (SIC) 3273– Ready-Mix Concrete. The Facility encompasses approximately 5.55 acres, including 101,222 square feet of paved area and 25,853 square feet of buildings.

According to the Facility's current Storm Water Pollution Prevention Plan ("SWPPP"), industrial activities at the Facility include the following: materials storage, fuel storage, aggregate storage, cement processing, equipment parking, equipment fueling, material unloading, truck loading/unloading, vehicle parking, vehicle fueling, vehicle repairs, storage shipping and receiving, and Portland cement concrete manufacturing.

Based on the EPA's Industrial Storm Water Fact Sheet for Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from concrete mixing facilities such as the Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to CEPA indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

#### **B. The Affected Receiving Waters**

The Facility discharges into a municipal storm drain system, which then discharges to the Kaweah River, a tributary of the Tulare Lake Basin ("Receiving Waters").

The Tulare Lake is a water of the United States. The CWA requires that water bodies such as the Tulare Lake meet water quality objectives that protect specific "beneficial uses." The Central Valley Regional Water Board has issued its *Water Quality Control Plan for the Tulare Lake Basin* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PRO), Industrial Service Supply (IND), Navigation (NAV), Water Contact Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Ground Water Recharge (GWR).

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants. Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.



### **III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

#### **A. Deficient/Invalid SWPPP**

The Discharger's current Storm Water Pollution Prevention Plan ("SWPPP") for the Facility fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- a. The SWPPP is invalid because it was not certified and executed by the Facility's Legally Responsible Person. In fact, the SWPPP was not signed by anyone. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), which includes SWPPPs, must be certified and submitted by a duly authorized Legally Responsible Person;
- b. The SWPPP discussion of drainage areas and Outfalls from which samples must be taken during Qualified Storm Events is both erroneous and contradictory (Section X.I), as follows:
  - i. Section 2.1 of the Facility SWPPP indicates that the Facility discharges to the Kaweah River.
  - ii. Section 2.3 of the Facility SWPPP states: "The site is designed to capture stormwater on-site and direct it to the detention pond at the southern portion of the site. However, a municipal stormwater inlet [is] located northeast of the site to capture run-on."
  - iii. Section 4.1.1 of the SWPPP (Sampling Locations) indicates: "Samples will be collected from the following locations, which are shown on the Figures: None - plant discharge and stormwater are detained on-site."
  - iv. Section 4.1.3 of the Facility SWPPP (Sampling Frequency) indicates that: "Samples must be collected four times a year during a Qualified Storm Event (QSE). Two sampling events during QSEs must occur between January 1 and June 30 and two sampling events must occur between July 1 and December 31".
- c. The SWPPP fails to discuss in detail factors related to the detention pond, including its maximum capacity, whether it is designed to conform with the requirements of Section X.H.6 of the General Permit (Design Storm Standards for Treatment Control BMPs), or whether it is engineered and constructed to contain the maximum historic precipitation event.

- d. The SWPPP fails to include an adequate description of Potential Pollutant Sources and a narrative assessment of all areas of industrial activity with potential industrial pollutant sources (Section X.G.1 and X.G.2);
- e. The SWPPP fails to include the appropriate sampling parameters for the Facility (Table 1, Section X.I); and
- f. Table 3.2 in Section 3 of the SWPPP (Best Management Practices) fails to contain an adequate description of site-specific BMPs sufficient to comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in the Facility's storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

**B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit**

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

**1. Failure to Conduct Visual Observations**

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

CEPA alleges that between April 1, 2013, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect Storm Water Samples

In addition, CEPA alleges that the Discharger has failed to provide the RWQCB with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

Furthermore, if the Facility does not experience discharge because it is engineered and constructed to contain the maximum historic precipitation event (or series of events), the Discharger is required to submit a Notice of Non-Applicability (NONA) and a No-Discharge Technical Report to the Regional Board by following the steps listed in Section XX.C of the General Permit.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015. QSEs occurred in the vicinity of the Facility on at least the following relevant dates: 11/02/15, 11/08/15, 11/15/15, 12/03/15, 12/10/15, 12/13/15 and 12/19/15 and 12/21/15;
- b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016. QSEs occurred in the vicinity of the Facility on at least the following relevant dates: 01/04/16, 01/10/16, 01/13/16, 01/16/16, 01/22/16, 01/30/16, 02/18/16, 03/04/16, 03/11/16, 04/09/16, 04/22/16, 04/28/16 and 05/21/16;

- c. Two storm water sample analyses for the time period July 1, 2016, through December 31, 2016. QSEs occurred in the vicinity of the Facility on at least the following relevant dates: 10/14/16, 10/16/16, 10/25/16, 10/30/16, 11/01/16, 11/19/16, 11/23/16, 11/26/16, 12/8/16, 12/10/16, 12/15/16 and 12/23/16;
- d. Two storm water sample analyses for the time period January 1, 2017, through June 30, 2017. QSEs occurred in the vicinity of the Facility on at least the following relevant dates: (Sacramento) 01/02/17, 01/07/17, 01/10/17, 01/18/17, 02/02/17, 02/06/17, 02/17/17, 02/20/17, 03/05/17, 03/21/17, 03/24/17, 04/07/17, 04/13/17, 04/16/17 and 04/22/17;
- e. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017. QSEs occurred in the vicinity of the Facility on the following relevant dates: 10/19/17, 11/8/17, 11/15/17, and 11/27/17.

Further, the Discharger has not applied for or received a No Exposure Certification (NEC) for the facility, pursuant to Section XVII of the General Permit.

In addition, the Discharger has not applied for or received an exemption from sampling for Dischargers claiming "No Discharge" through the Notice of Non-Applicability (NONA) provisions contained in Section XX.C of the General Permit.

**C. Falsification of Annual Reports Submitted to the RWOCB**

Section XXI.L of the General Permit provides as follows:

**L. Certification**

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:



**N. Penalties for Falsification of Reports**

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On October 6, 2016, and October 11, 2017, the Discharger submitted its Annual Reports for the Fiscal Years 2015-16 and 2016-2017 respectively. These Reports were signed under penalty of law by Robert Christensen. Mr. Christensen is the currently designated Legally Responsible Person (“LRP”) for the Facility.

Mr. Christensen responded “Yes” to Question No. 3 on both of the Annual Reports (“Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?”) However, as discussed above, the Discharger failed to collect and analyze *any* storm water samples during either the 2015-16 or the 2016-17 reporting years.

Based on the foregoing, it is clear that Mr. Christensen made a false statement in the Facility’s 2015-16 and 2016-17 Annual Reports when he indicated that the facility had collected samples according to Section XI.B of the General Permit.

**D. Failure to File Timely Annual Reports**

The Discharger has failed to comply with Section XVI.A of the General Permit, which provides as follows: “The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS.”

The Discharger’s Annual Report for the reporting year 2015-16 was due on or before July 15, 2016. However, the Discharger failed to file the Annual Report until October 6, 2016.

On September 27, 2017, the Regional Water Board issued a First Notice of Non-Compliance to the Discharger for its failure to submit its Annual Report for the reporting period 2016-17, which was due on July 15, 2017. The Discharger did not submit its Annual Report for the fiscal year 2016-17 until October 11, 2017.



**E. Deficient BMP Implementation**

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

CEPA alleges that the Discharger has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

The Discharger's failure to develop and/or implement adequate BMPS and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

**F. Discharges In Violation of the General Permit**

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to CEPA (including its review of publicly available data) indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

Specifically, dust generating activities occur at the Facility, including the crushing and grinding of concrete and other materials. In addition, vehicle and equipment washing and cleaning occurs at the Facility, and the Facility handles liquid waste. Information available to CEPA indicates that the wash water and/or liquid waste discharge from the Facility as unauthorized non-storm water discharges, due to inadequate BMP development and/or implementation necessary to prevent these discharges.

CEPA alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

CEPA hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

**G. Failure to Comply with Facility SWPPP**

Section 4.1.3 of the Facility SWPPP (Sampling Frequency) indicates that: “Samples must be collected four times a year during a Qualified Storm Event (QSE). Two sampling events during QSEs must occur between January 1 and June 30 and two sampling events must occur between July 1 and December 31”.

As detailed above, the Facility has failed to collect QSE samples for at least the time period July 1, 2015, through the present, in violation of the Facility’s SWPPP.

Section 4.2.1 of the Facility’s SWPPP (Monthly Visual Observations) indicate that the Facility will conduct Monthly Visual Observations in compliance with the General Permit. However, CEPA alleges that the Facility has failed to conduct these observations in accordance with the General Permit.

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

**IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entity responsible for the alleged violations is Christy Vault Company, Inc, as well as employees of the Discharger responsible for compliance with the CWA.

**V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least April 1, 2013, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

## **VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is the California Environmental Protection Association ("CEPA").

To ensure proper response to this Notice, all communications should be addressed as follows:

*Xhavin Sinha, Attorney for*  
*CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION*  
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*San Jose, CA 95125*  
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## **VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of CEPA live, work, and/or recreate near the Receiving Waters. For example, CEPA members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of CEPA's members have been, are being, and will continue to be adversely affected by the failure of the Discharger to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), CSPA will seek to recover its litigation costs, including attorneys' and experts' fees.

#### **VIII. CONCLUSION**

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



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Khavin Sinha

Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION



**SINHA**  
**LAW**

60-Day Notice of Intent to Sue  
March 12, 2018  
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